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SYNIGAL

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

2 METROPOLITAN DIRECT PROPERTY
3 AND CASUALTY INSURANCE
COMPANY, a Rhode Island Corporation,

Plaintiff,

v.

6 MALCOLM M. SYNIGAL, SR., an
7 individual, and ANGELA M. SYNIGAL,
an individual, and DANITA KING, an
individual.

Defendants.

Case No. C-07-05466 WHA

**FURTHER JOINT STATUS REPORT AND
STIPULATION FOR SHORT
CONTINUANCE OF CASE
MANAGEMENT CONFERENCE;
[PROPOSED] ORDER**

Date: September 10, 2008
Time: 11:00 a.m.
Courtroom: 9
The Honorable William H. Alsup,

STATUS OF UNDERLYING ACTION

This is an insurance coverage action that arises from an underlying civil lawsuit entitled *King v. Synigal*, Contra Costa County Superior Court Action No. C07 01910 (the “*King* action”). The *King* complaint states two causes of action, but substantively asserts three claims: 1) negligence against Malcolm and Angela Synigal [for negligently supervising their son]; 2) negligence against Marlin [claiming he was “negligent in the manner in which he accosted Plaintiff’s daughter,” which resulted in her death]; and 3) intentional tort against Marlin

1 [alleging he intentionally assaulted Nadawn Brown].¹

2 Discovery in the *King* action is underway. Plaintiff King was supposed to have deposed
 3 Mr. and Mrs. Synigal on August 6, and a mediation was supposed to have occurred before August
 4 19. Those dates have been continued, however, because Ms. King's counsel had not yet received
 5 all of the hospital records needed to proceed.

6 The mediation is now scheduled for September 25, 2008. A further Case Management
 7 Conference in the trial court is scheduled for October 7, 2008. If the case has not resolved by that
 8 time, the parties expect that a trial date will be assigned.

STATUS OF THIS INSURANCE COVERAGE ACTION

10 In this insurance action Metropolitan Direct seeks a declaration that the claims asserted
 11 against the Synigals are not within the scope of coverage afforded by the policy. Alternatively,
 12 Metropolitan seeks a declaration that the policy's intentional or criminal acts exclusion precludes
 13 coverage for the Synigals.

14 The Synigals previously filed a motion to stay or dismiss this insurance action on the
 15 ground that a declaration that coverage does not apply would require this Court to determine the
 16 same factual issues that already are pending in both the state criminal and civil actions. This
 17 Court granted the Synigals' motion to stay for a period of six-months, and scheduled the original
 18 July 17, 2008 case management conference to revisit the status of the underlying proceedings.
 19 That conference was continued to September 10, 2008 at the parties' request, based on events in
 20 the underlying action.

21 Both Metropolitan Direct and the Synigals have expressed an interest in trying to resolve
 22 the *King* action now, before defense costs mount and before additional fees are incurred to
 23 prosecute the insurance declaratory relief suit. Counsel in this insurance action and the *King*
 24 action have discussed the need for early mediation on numerous occasions. **All parties intend to**
 25 **participate in mediation of the underlying *King* action, for purposes of resolving both that**

26 ¹ A criminal complaint also was filed against Marlin Synigal in Contra Costa County Superior
 27 Court in March 2006. That complaint alleges that on March 22, 2006, Marlin broke into the
 28 house belonging to Nadawn Brown and killed her with a Dumbbell Bar. Marlin was charged with
 murder and residential burglary. Marlin was determined to be incapable of standing trial, and so
 the criminal proceedings have been suspended.

1 case and the insurance litigation now pending before this Court.

2 Because the mediation of the *King* action will not occur until the end of September, the
 3 parties request that the September 10, 2008 status conference be continued to a date after October
 4 7, 2008. That would allow sufficient time to complete the mediation process, and attend the case
 5 management conference for further scheduling if the mediation is not successful.

6 **STIPULATION TO CONTINUE THE SEPTEMBER 11 STATUS**
 7 **CONFERENCE**

8 The parties to this action, by and through their respective counsel, therefore stipulate as
 9 follows:

10 1. Because the parties wish to participate in the mediation of the underlying *King*
 11 action, which is scheduled to take place on September 25, 2008, the parties agree that this action
 12 should continue to be temporarily stayed.

13 2. The parties further stipulate and request that the case management conference
 14 currently set for September 10, 2008 be continued to a date after October 7, 2008, with an
 15 updated joint status report due 7 days prior to the new case management conference date.

16 DATED: August 28, 2008

LOMBARDI, LOPER & CONANT, LLP

18 By: /s/ Lori A. Sebransky

19 LORI A. SEBRANSKY

20 Attorneys for defendants Malcom M. Synigal, Sr. and
 21 Angela M. Synigal

22 DATED: August 28, 2008

CHARLSTON, REVICH & CHAMBERLIN, LLP

24 By: /s/ Stephen P. Soskin

25 STEPHEN P. SOSKIN

26 Attorneys for plaintiff Metropolitan Direct Property and
 27 Casualty Insurance Company

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1 DATED: August 28, 2008

LAW OFFICES OF CLARENCE LIVINGSTON, JR.

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By: /s/ Clarence Livingston, Jr.

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CLARENCE LIVINGSTON, JR.
Attorneys for defendant Danita King

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ORDER

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IT IS HEREBY ORDERED that

- 9 1. This action continues to be temporarily stayed.
- 10 2. A further status conference is set for _____, 2008 at 10:00 a.m. An
11 updated joint status report must be filed by _____, 2008.

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DATED: _____

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HON. WILLIAM H. ALSUP
JUDGE OF THE DISTRICT COURT

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